

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 45

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THE CHOCTAW, OKLAHOMA AND GULF RAILROAD  
COMPANY, APPELLANT,

vs.

JOHN A. HARRISON, AS SHERIFF OF PITTSBURG  
COUNTY, STATE OF OKLAHOMA, AND PERSONALLY.

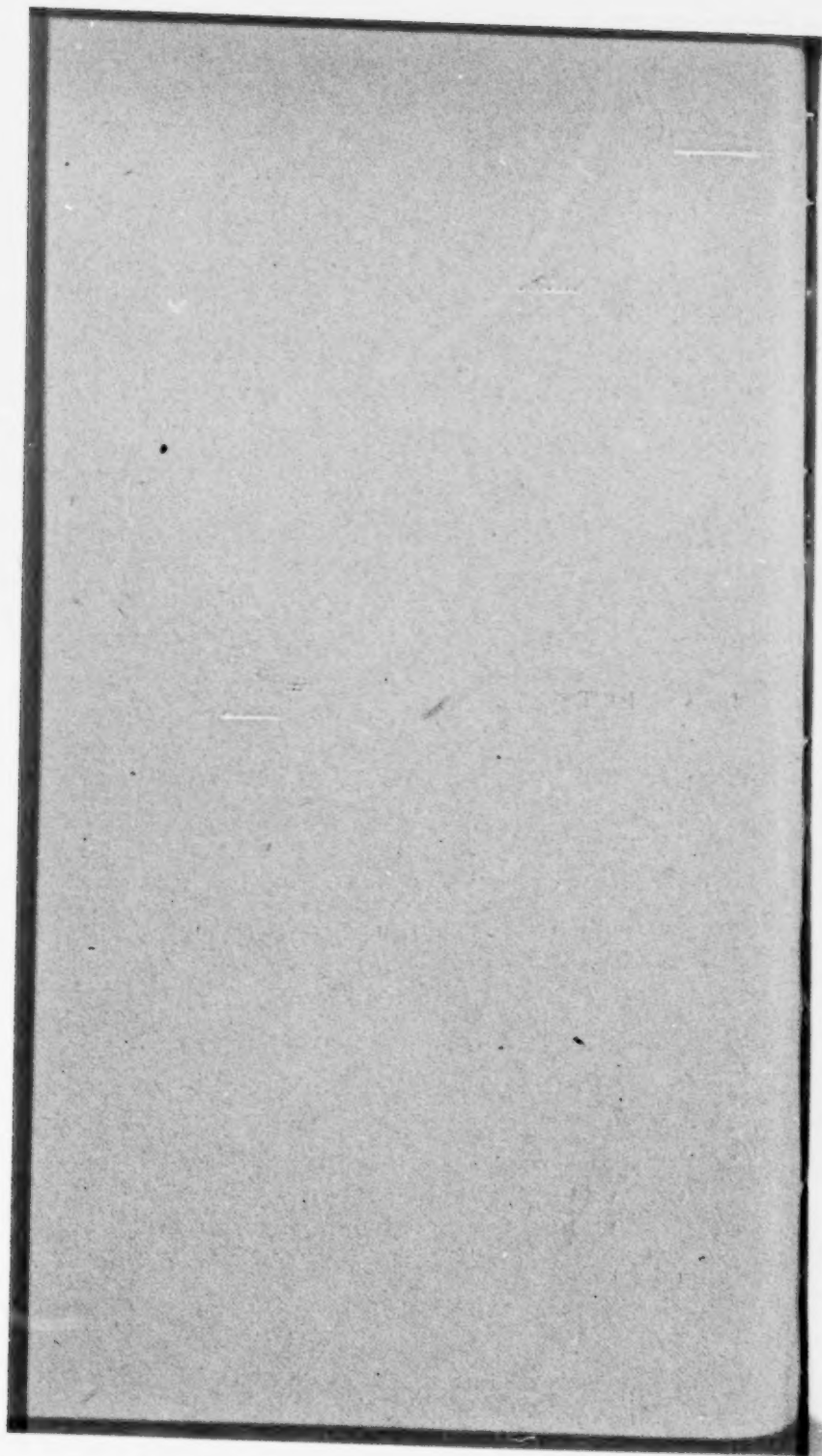
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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF OKLAHOMA.

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FILED AUGUST 2, 1913.

(23,320)



(23,320)

SUPREME COURT OF THE UNITED STATES.

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No. 320.

THE CHOCTAW, OKLAHOMA AND GULF RAILROAD  
COMPANY, APPELLANT,

*vs.*

JOHN A. HARRISON, AS SHERIFF OF PITTSBURG  
COUNTY, STATE OF OKLAHOMA, AND PERSONALLY.

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THE EASTERN DISTRICT OF OKLAHOMA.

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1 In the United States Circuit Court for the Eastern District of Oklahoma.

THE CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY, Complainant,

vs.

JOHN HARRISON, as Sheriff of Pittsburg County, State of Oklahoma, and Personally.

*Bill of Complaint in Equity.*

To the Honorable the Judges of the United States Circuit Court within and for the Eastern District of the State of Oklahoma:

The Choctaw, Oklahoma and Gulf Railroad Company, a corporation duly organized by, under and in pursuance of an Act of Congress of the United States, brings this its bill against John Harrison, as Sheriff of the County of Pittsburg, in the State of Oklahoma, and personally, and for its cause of complaint says:

1. That the said Harrison is the duly elected, qualified and acting Sheriff of the County of Pittsburg, State of Oklahoma, and a resident and citizen of said State, and that at the close of the first session of the legislative assembly of the State of Oklahoma, there was published in the printed volume of the Session Laws of said the assembly, a certain publication purported to be House Bill No. 363 of the said assembly, and to have been duly passed by both houses of said Assembly, as signed by the Governor of the said State and to have become a part of the laws of said state, the same being entitled:

"An Act for the Levy and collection of a Gross Revenue Tax from Public Service Corporations in this State and from persons, firms, corporations or associations engaged in the mining or production of coal, asphalt or ores bearing lead, zinc, jack, gold, silver or copper, or of petroleum or other mineral oil, or of natural gas; and declaring and emergency."

and being published at page 640 of the said Session Laws

2 of the said Session.

2. That said pretended law provides that, as used therein, the term "transportation company" shall include any company, corporation, trustee, receiver or person owning, leasing or operating for hire, a railroad, and that every corporation named therein shall pay the State of Oklahoma a gross revenue tax for the fiscal year ending June 30, 1909, and for each year thereafter, which shall be in addition to the taxes levied and collected upon an ad valorem basis upon the property and assets of such corporation, equal to the per centum of its gross revenue receipts therein provided, namely: that if such corporation be a transportation company and operating partly within and partly without the State, it shall pay a tax equal to such proportion of one half of one per centum of its

gross receipts, as the portion of its business done within the State bears to the whole of its business; provided, that if satisfactory evidence is submitted to the corporation commission, at any time prior to the time fixed by the said pretended Act for the payment of said tax, that any other proportion more fairly represents the proportion which the gross receipts of any such public service corporation for any year within said state bears to its total gross receipts, it shall be the duty of said corporation commission to fix, by any order entered of record, such other proportion as the proportion upon which said tax shall be computed.

3. Also it is provided in said pretended enactment, that every person, firm, association or corporation engaged in the mining or production within said State, of coal shall, within thirty days after the expiration of each annual period, expiring respectively on the first day of July, October, January, and April of each year, file with the said Auditor a statement under oath, on forms prescribed by him, showing the location of each mine, or oil or gas well operated by such persons, firm, association, or corporation during the last preceding quarter, the kind of mineral and the gross amount thereof produced, the actual cash value thereof, and shall, at the

3 same time, pay to the said Treasurer, a gross revenue tax which shall be in addition to the taxes levied and collected upon ad valorem basis upon such mining property and the appurtenances, and equal to two per centum of the gross receipts from the total production of coal therefrom; and that the said State Auditor shall have power to require any such person, firm, association, or corporation engaged in mining or other production of minerals, to furnish any additional information by him deemed necessary for the purpose of computing the amount of said tax, and to examine the books, records, and files of such person, firm, association or corporation, and shall have power to examine the witnesses; also that the tax provided for against miners and producers of coal shall become delinquent after the date fixed for each quarter-annual report so required to be file- in the office of the State Auditor, and from such time, shall bear, as a penalty for such delinquency, interest at the rate of eighteen per centum per annum;

4. Also that when any tax so provided for shall become delinquent, that the State Auditor shall issue his warrant directed to the Sheriff of any county wherein the same or any part thereof accrued, and the sheriff to whom said warrant shall be directed shall proceed to levy upon the property, assets and effects of such person; firm, association or corporation against whom such pretended tax is assessed, and sell the same and to make return thereof as upon execution;

5. And by said pretended enactment, it was also prescribed that the same should, by reason of any emergency recited to exist, take effect from and after its passage and approval, and the said pretended enactment was approved on the 26th day of May, 1908.

6. Further complaining, said complainant states that the said Choctaw, Oklahoma and Gulf Railroad Company is a corporation organized by, and existing under and in pursuance of an Act of

Congress, as will be hereinafter more fully set out, and is a non-resident, and is not a citizen of the said State of Oklahoma;

4 7. Said complainant further states that on the 28th day of November, 1887 there was organized under and pursuant to the laws of the State of Minnesota, a corporation called the Choctaw Coal and Railway Company, which was empowered, among other things, to mine, sell, market, and deal in coal, iron and other ore and the products thereof, to manufacture coke, charcoal, pig iron and various other metals, to buy, lease, deal in and work mineral lands, and to build, acquire, maintain, and operate roads, ways and railroads necessary or useful in the operation or development of any mine or quarry owned or operated by it, as more fully appears from copies of the charter of said corporation and amendments thereto hereto attached and marked "Exhibit A," and hereby made a part hereof as fully as if set forth herein, and as further appears from the laws of said State of Minnesota, under and pursuant to which said corporation was organized.

8. That by an act of Congress approved on, to-wit: February 18th, 1888, the Choctaw Coal and Railway Company aforesaid was empowered and authorized to construct and maintain a railway, telegraph and telephone line through what was then Indian Territory, from a point on the Red River, at or near bluff known as Rock Cliff on the southern boundary of said Territory, and running thence by the most feasible and practicable route through said Territory to a point on the Eastern line contiguous to the west boundary line of Polk and Sevier Counties in the State of Arkansas, and also to construct and maintain a branch line of railway to extend from some suitable point on the above line of railway in a northwesterly direction to the leased coal veins of said Choctaw Coal and Railway Company, situated in what was then Tobuskey County, Choctaw Nation, and from thence by some practicable route to the intersection with the Atchison, Topeka and Santa Fe between Halifax station and Ear Creek, otherwise known as the North Fork of the Canadian River; all as more fully appears from said Act of Congress and an amendment thereof, approved February 13, 1889.

5 9. That the leased veins and coal mine referred to in the Act of Congress in the last above section hereof described, were coal leases which the said Choctaw Coal and Railway Company had, pursuant to its charter right and the laws of the United States, acquired from various citizens of the Choctaw Nation and which said Choctaw Coal and Railway Company had and held at the time of the passage of the last above mentioned Act of Congress. That afterwards by the Act of Congress, approved October 1st, 1890, the United States gave its consent to the various coal leases made by the Citizens of the Choctaw Nation to said Coal and Railway Company, as more fully appears by said Act of Congress wherein is described the various leases thereby assented to by the United States Government.

10. That pursuant to its charter and the foregoing Acts of Congress, the Choctaw Coal and Railway Company proceeded to develop coal mines upon the leases aforesaid and to construct a railway line

connecting therewith for the transportation of the products of said mines; and in the prosecution of its work said corporation became insolvent and it became necessary for the United States Government to make some provision for the work undertaken by it to be carried on, and in order that the leased mines might be operated for the benefit of the Indians as wards of the United States and for the purpose of the development of commerce in said Territories and among the several states of the Union; that to accomplish said purposes and to secure the operation of said mines for the benefit of the Indians and in the interests of interstate commerce, the United States Government, by an Act approved by Congress on, to-wit, August 24, 1894, empowered the purchasers of the rights of way, railroads, mines, coal, leasehold estates, and other property and the franchises of the Choctaw Coal and Railway Company, at any sale made under or pursuant to any decree of court, to form a corporation, and vested in said corporation, formed all the rights, title, interest, property, possession, and claim demanded in law and equity thereof, in and to such rights of way, railroads, mines, coal leasehold estates, and property of said Choctaw Coal and Railway Company, together with all the franchises which had been conferred upon said company by any and all Acts of Congress, or which it possessed by virtue of its charter under the laws of the State of Minnesota, all as more fully appears from said Acts of Congress last aforesaid; that pursuant to said last named Acts of Congress there was organized the complaining corporation the Choctaw, Oklahoma and Gulf Railroad Company; that Section 4 of the last named Act aforesaid, (here set out for the convenience of the Court) is in words and figures as follows:

"Sec. 4. That it shall and may be lawful for such new corporation to construct and operate branches from its said railroad and for such purpose to take and use rights of way not exceeding one hundred feet in width, upon making compensation therefor as provided for in the case of taking land for its main line, and to lease its railroads and mines and other property to any company owning or operating a railroad connecting with the railroad of said new corporation on such terms and conditions as may be agreed upon, provided, that the right to construct branches, conferred by this section shall exist and be exercised in the Indian Territory only for the purpose of developing and working the leases mentioned in the Act of Congress of October first, eighteen hundred and ninety."

11. That the United States Government, by an Act of Congress approved, to-wit, April 24th, 1896, duly recognized the Choctaw Oklahoma and Gulf Railway Company, pursuant to an Act approved August 24th, 1894, and further defined and prescribed the rights powers and duties thereof. Section 2 of said Act of April 24, 1896, (here copied for the convenience of the Court), is in words and figures as follows:

Sec. 2. That the powers conferred by said section four shall extend to branches intended to aid the development of any coal or timber territory contiguous or tributary to the lines of railroad of the said Choctaw Oklahoma and Gulf Railroad Company, whether owned



and controlled by said company or by others, said branches not to exceed in length five miles, and to the construction and operation of a branch from any point on its existing line of railway to the northern boundary of the State of Texas, and for this purpose the said company shall have the like rights, powers and franchises, as to the acquisition of right of way and depot grounds, and as to the construction and operation of said branch, and shall be subject to the like conditions and restrictions as it possesses or is subject to under

7 or by virtue of the provisions — the said Act of August twenty-fourth, eighteen hundred and ninety four, as to the line of railroad acquired or constructed thereunder."

12. That pursuant to and in accordance with the Acts of Congress in this section described, the Choctaw, Oklahoma and Gulf Railroad Company purchased and became possessed of and vested with all the right, title, interest, property, possession, claim and demand in law and equity, in and to such rights of way, railroads, mines, coal leasehold estates, and property of the said Choctaw Coal and Railway Company, and with all the rights, powers, immunities, privileges and franchises which had been heretofore granted to said Choctaw Coal and Railway Company, or conferred upon it by any Act of Congress, or which it possessed by virtue of its charter under the laws of the State of Minnesota; and that said Choctaw, Oklahoma and Gulf Railroad Company became possessed of and vested with, in addition to all the foregoing, such further and additional franchises and rights as were granted to it by the aforesaid Acts of Congress authorizing its organization, as more fully appears therefrom.

13. That by the Act of Congress approved on, to-wit, June 23, 1898, commonly known as the Curtis Act, it was and is provided that the coal mines of the Choctaw and Chickasaw Nations shall be under the supervision of two trustees; that all coal mines of the two Nations, developed or thereafter to be developed, shall be operated and the royalties therefrom paid into the Treasury of the United States and shall be drawn therefrom under such rules and regulations as shall be prescribed by the Secretary of the Interior.

14. By said Acts all contracts which had heretofore been made with the National Agent of the Tribes for operating coal mines which were, on the 23rd day of April, 1897, being operated in good faith, were ratified and confirmed and the *leases* of said contract given the right to renew the same; that pursuant to said so called Curtis Act, the Choctaw, Oklahoma and Gulf Railroad Company applied  
8 to the Trustees of the Choctaw and Chickasaw Nations for the execution of new leases covering its leasehold interests in said Indian Territory, as provided for by said Act, and file with its said application a correct description and maps of all of its said coal leases, numbering the same from 1 to 30 inclusive; that thereafter, in accordance with such application, the mining Trustees of said Choctaw and Chickasaw Nations executed and delivered to the Choctaw, Oklahoma and Gulf Railroad Company 30 leases of approximately the same lands as were embraced in the leases assented to by the Acts of Congress approved on, to-wit, October 1, 1890.

Except as to the description of the lands embraced in said leases,



the terms and conditions of said leases are substantially the same. Copy of one of said leases is hereto attached, marked "Exhibit B," and hereby made a part hereof as fully as if set forth herein. Copies of Rules and Regulations, numbered 5, 6, 7, 10, 11, 3 and 14, of the Secretary of the Interior now in force and relating to said leases, are, for the conveniences of the Court, likewise attached, marked "Exhibit BB."

15. That prior to March 24, 1904, the Choctaw, Oklahoma and Gulf Railway Company, pursuant to and in accordance with its rights, powers, privileges and duties, under and by virtue of its charter and the various Acts of Congress heretofore referred to, proceeded to construct and acquire and become possessed of the following lines of railroad, to-wit:

(a) A line of railway extending from a point on the west bank of the Mississippi River at or near Hopefield, Crittenden County, Arkansas, opposite Memphis, Tennessee, by way of Little Rock, Pulaski County, Arkansas, to a point on the boundary line between the Territory of Oklahoma and the State of Texas, at or near Texola, Greer County, Oklahoma.

(b) A line of railway from (a) Brinkley, Monroe County, Arkansas, to Jacksonport, Jackson County, Arkansas, and (b) from Wiville, Woodruff County, Arkansas, to Gregory in said County.

(c) A line of railway extending from Little Rock, Pulaski County, Arkansas, to Hot Springs, Garland County, Arkansas.

(d) A line of railway extending from Butterfield, Hot Springs County, Arkansas, to Malvern in said County.

(e) A line of railway extending from Wilburton, Indian Territory, to Haileyville, Indian Territory.

9 (f) A line of railway extending from Haileyville Junction, Indian Territory, to Ardmore, Indian Territory.

(g) A line of railway extending from Tecumseh Junction, Pottawatomie County, Oklahoma, to Asher on the Canadian — in said County.

(h) A line of railway extending from Geary, Blaine County, Oklahoma, through Woods County, Oklahoma, to Anthony, Harper County, Kansas.

(i) A line of railway extending from Ingersoll, Woods County, Oklahoma, to Alva, in said County.

In addition to said lines of railway said company has acquired the railway tracks, terminals, property and appurtenances in the City of Memphis, together with ferries, inclines and other facilities for crossing the Mississippi River at said point.

16. That said Choctaw, Oklahoma and Gulf Railroad Company had likewise, prior to March 24, 1902, pursuant to its rights, powers, privileges and duties under its charters and laws aforesaid, located, developed and was operating six (6) mines at a cost of one million dollars (\$1,000,000.00) upon its leasehold aforesaid; that all of said mines were along or adjacent to the rights of way of its line of railway and were connected therewith by branch, spur or side tracks, and that said Choctaw, Oklahoma and Gulf Railroad Company was by virtue of its rights, powers, privileges and franchises under its

said charter — the said Acts aforesaid, on said last mentioned date, to-wit: March 24, 1904, and now is possessed of the commingled right to own and operate its said railways and its said coal mines in conjunction with each other; that the right to operate said mines was and is vested right arising from and supported by the contract so made and complied with by and between the United States of America and the said complainant, the Choctaw, Oklahoma and Gulf Railroad Company, of which said complainant could not be deprived without just compensation, and without the process of law, and said State of Oklahoma has no right, power or authority to impose the obligation of the same by imposing said or any license tax upon the exercise of complainant's right and performance of its duties under the said contract.

17. Complainants further state the lands upon which the coal mines now being operated by complainants are located and situated are the property of the Choctaw and Chickasaw Tribes of

10 Indians, and are located within the geographical limits of what is known as the Choctaw Nation upon the segregated and unallotted lands of said Nations; and that the title to said unallotted lands is still in the Choctaw and Chickasaw Tribes of Nations as aforesaid. That under an Act of Congress, entitled, "An Act for the protection of the people of Indian Territory, and other purposes," approved June 5th, 1898, and the agreement set out in Section 29 thereof, known as the Atoka Agreement, it was provided that all the coal and asphalt lands within the limits of the Choctaw and Chickasaw Nations shall remain and be the common property of the members of the Choctaw and Chickasaw Tribes of Indians, and that no patent provided for by an Act of Congress, or by the Atoka Agreement, shall convey any title thereto, and that the revenues derived therefrom shall be used for the education of the children of Indian blood of the members of said Tribes.

18. Your complainants show that it is further provided in said law and agreement that all leases shall be subject to the approval of the Secretary of the Interior of the United States, and that all monies and royalties derived from said leasing of said coal lands shall be paid into the Treasury of the United States.

19. Your complainants further show that by the provisions of an Act entitled, "An Act to enable the people of Oklahoma and Indian Territories to form a constitution and state government, and be admitted into the Union on equal footing with the other states, etc.," it is specifically provided that nothing contained in the said constitution (meaning the constitution of Oklahoma) shall be construed to limit or impair the rights of person or property pertaining to the Indians of said Territory, so long as the rights shall remain unextinguished, or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law or otherwise, which it would have been competent to make if this Act had never been passed." It is further provided in said

11 Enabling Act that the people inhabiting said proposed state do agree and declare that they forever disclaim all right and title in and to all lands lying within said limits owned or

held by any Indian Tribe or Nation; and that until the title to any such public land shall have been extinguished by the United States the same shall be and remain subject to the jurisdiction, disposal, and control of the United States.

20. And your complainants further show that Article 1, Section 3 of the Constitution of the State of Oklahoma adopts in full the foregoing section of the Enabling Act.

21. Your complainants, therefore, show inasmuch as the State of Oklahoma has by its constitution renounced all control and jurisdiction over the lands of the Choctaws and Chickasaws, and inasmuch as, by the Enabling Act aforesaid, Congress has reserved to itself the exclusive right to legislate in regard to the coal lands of said Tribes of Indians, and has reserved the exclusive jurisdiction over the same, the State of Oklahoma has no power through its legislature or other governmental agency to interfere with the operation of said coal mines under the Federal leases aforesaid; and that the action of the officers of the State in attempting to levy and collect the tax herein complained of is in violation of the Federal law as aforesaid, and of the constitution and laws of the State of Oklahoma.

22. Your complainant further shows that the said pretended act of the legislature of the State of Oklahoma, under which the defendants herein are claiming to act, is in violation of the 14th Amendment to the Constitution of the United States, and the constitution and laws of the State of Oklahoma, in this: That the two per centum tax now sought to be collected is in its nature and effect confiscatory, and will have the effect of destroying complainant's business, and will prevent it from discharging its obligation to pay royalty under its leased contracts as aforesaid; that if said tax is enforced as now attempted it will prevent complainant from earning anything like a reasonable profit upon its investment, and will soon cause complainant to run its said coal business at a loss; and that, therefore,

12 if this confiscatory tax as aforesaid is enforced it will be the actual taking of complainant's property without the consent of the complainant and without due process of law.

23. Your complainants further show to this Honorable Court that the pretended Act of the legislature aforesaid, under which the defendants are taking action and seeking to act is invalid and of no effect because it is in violation of Section 19, Article 10 of the constitution of Oklahoma. Complainant shows that by said section of the constitution it is provided:

"That every Act enacted by the legislature, and every ordinance and resolution passed by any county, city, town or municipal board or local legislative body levying a tax, shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose."

Complainants show to the court that neither the purpose for which the tax herein sought to be collected, or the fund to which it shall be credited when collected, is anywhere stated or mentioned in said pretended act of the legislature under which these defendants are acting, and that the purpose of said tax and the fund to which it is to be

credited are not mentioned or set forth in any other act or legislation of the legislature of the State of Oklahoma.

24. Complainants, therefore, state that the said pretended act by reason of its failure to state the purpose for which the tax is levied, and its failure to name the fund to which it shall be credited is in plain and open violation of the constitutional provision aforesaid, and is absolutely null and void, and that these defendants have no power or authority to do any act — thing under and by virtue of such pretended act of the legislature.

25. That the complainant Choctaw, Oklahoma and Gulf Railroad Company has been during all the time of the existence of its coal leases aforesaid, and still is, in duty bound to work, operate, sell and transport the products of said mines in accordance with said leases and in accordance with the several Acts of Congress governing the same, and in accordance with its said duty so to do it has been at all times heretofore, and still is working and operating said

13 mines and marketing the products thereof in accordance with its duties and obligations under its said leases and the laws of the United States. That from and including the year 1900 and to and including the year 1908 it mined and marketed from said leased mines approximately five million eight hundred thousand (5,800,000) tons of coal; that it paid in royalties for the benefit of the Choctaw and Chickasaw Nations thereon approximately four hundred and sixty-three thousand, three hundred and sixty-two (\$463,362.00) dollars. That it has at all times hereinbefore mentioned mined and marketed and still is mining and marketing an amount of coal in excess of the minimum required by said lease.

26. That on the 16th day of March A. D. 1908, the Choctaw, Oklahoma and Gulf Railroad Company, the complainant, entered into a contract of agency with the Rock Island Coal Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Oklahoma, by the terms and conditions of which said coal company, as the agent of complainant, the Choctaw, Oklahoma and Gulf Railroad Company, assumed and agreed to work and operate said mines and market the production thereof for a commission of five cents (5¢) per ton for all coal produced and sold, a copy of which is hereto attached and marked "Exhibit C," and hereby made a part hereof as fully as if set forth herein; and the said complainant the Choctaw, Oklahoma and Gulf Railroad Company, is now, and has been since March 16th, 1908, working and operating its mines and marketing its products thereof through its agent, the Rock Island Coal Mining Company, and as will better appear by reference to the said copy of said lease, the said Choctaw, Oklahoma and Gulf Railroad Company bound itself by the said agency contract to pay all expenses of every kind relating to the operation of the said mines, and to the transaction of the business

14 of said agency; that the said Rock Island Coal Mining Company from and including the 26th day of May, 1908 operated to and including the 26th day of November, 1908, operated said mines under said agreement and produced therefrom within said time two hundred and twelve thousand three hundred and seventy-

one and fifteen hundredths (212,371.15) tons of coal and derived from the sale thereof the sum of Five Hundred and Seven Thousand six hundred and sixty-one and eleven hundredths dollars (\$507,661.11; that the said complainants have at all times disputed and now dispute the validity of said pretended statute and denies the right of all persons to enforce the payment of the said tax, but for the convenience of the said State Auditor of the State of Oklahoma caused a report of said production and amount of proceeds derived from them to be made to him, but at the same time advised him of its intention to dispute the validity of said statute and the right to collect said tax, and that the said report was made in order to avoid any inconvenience to said officer.

27. Complainant further says that the said State Auditor in performance of what appears to him to be his official duty now claims that the said Rock Island Coal Mining Company should pay the sum of \$16,939.11/100 by reason of said production and revenue derived therefrom, and has, in pursuance of said pretended statute, issued his warrant directed to the said defendant, as sheriff of said county, commanding him to levy upon the property, assets and effects of the said coal mining company, against whom said tax is claimed, and sell the same and make return thereof, as upon execution.

28. Complainant further states that the said Rock Island Coal Mining Company has no property except the properties of the said complainant placed in its possession for use in the performance of its said agency contract as herein aforesaid, and the coal produced by it from the said mines under the said contract and that the complainant being bound by the terms of its agreement by said Rock Island

Coal Mining Company to pay all expenses of operating said  
15 mines, including taxes, would, if the payment of the pretended tax is enforced, be compelled to lose the same, and is therefore the real party in interest in this suit.

29. Complainant further says that the defendant in pursuance of his official duty, as it appears to him, threatens and is about to levy the said tax warrant upon said property so placed in the hands of the said Coal Mining Company by the said complainant, and if permitted to do so, will levy upon said properties and make pretended sale thereof, and thereby the properties of the said complainant will be scattered amongst various and different persons, purchasers at such unlawful sale and claiming title and ownership by virtue of such pretended sale and purchase, and thereby the business of said complainant will be compelled to resort to numerous and vexatious actions at law and suits in equity to protect said property rights and interests; that said complainant has no adequate remedy for the wrongs about to be afflicted except by such orders as this court may make and enforce for the preventing of the threatened acts of said officials.

30. Complainant further says that all of the properties of the said complainant subject to taxation of every kind have been assessed at their full value for taxation for the full period of time for which such pretended tax is claimed. In consideration hereof to the end that the defendants may answer the several matters and things here-

inbefore set forth complainant prays that said John Harrison, as sheriff of said county, and personally, and all persons acting under or for him or with him or in pursuance of his direction or authority and the authority of his office be temporarily restrained and enjoined from taking any action to enforce the payment of said pretended tax and the costs and penalties as prescribed for enforcement of payment and for failure to make such payment. That said pretended assessment be set aside and held for naught.

And your complainant further prays that a writ be directed to the said defendant commanding him at a certain time and  
 16 under the proper panalties to appear before this Honorable Court and a full, true and direct answer make to all and singular the matters and things hereinbefore set out, but answer under oath is hereby waived, and to severally perform and abide by such orders directions and decrees as may be made against them or either of them in the premises, and that complainant be awarded such other and further relief as it may be in equity entitled to as well as costs, and you- complainant will every pray.

C. O. BLAKE,  
 STUART & GORDON,  
*Solicitors.*

STATE OF OKLAHOMA,  
*County of Pittsburg, ss:*

I, C. B. Stuart, upon oath say-: That I am attorney for complainant in the above entitled cause, and as such am familiar with all the matters and things mentioned in the foregoing complaint which I have read. I know the contents thereof, and all of said allegations are true, to my own knowledge.

C. B. STUART.

Subscribed and sworn to before me this 19th day of July, 1909.  
 [SEAL.]

L. G. DISNEY,  
*Clerk U. S. Circuit Court,  
 Eastern Dist. of Oklahoma,  
 By GILES A. PENICK, Dep.*

Endorsed: Filed July 19, 1909, L. G. Disney, Clerk U. S. Circuit Court, Eastern District of Oklahoma.

17 In the United States Circuit Court for the Eastern District of Oklahoma.

CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY, Complainant,

vs.

JOHN A. HARRISON, as Sheriff of Pittsburg County, Oklahoma, and Personally, Defendant.

*Temporary Restraining Order.*

Whereas, in the above named cause it has been made to appear upon the bill of complaint filed herein, that writ of injunction pre-



liminary to the final hearing is proper, and that prima facie the complainant is entitled thereto, enjoining the defendants herein from the acts complained of and threatened to be committed.

Now, on motion of said complainant, it is ordered that the defendant appear before the Circuit Court of the United States for the Eastern District of Oklahoma, at the court room of said court, at McAlester, Oklahoma, on the 20th day of September, 1909, at 10 o'clock A. M. of said day, and then and there show cause, if any he has, why the preliminary injunction therein prayed for should not issue, and it appearing to the undersigned that there is danger of irreparable injury being caused to the complainant before the hearing of said application for the preliminary injunction can be heard, unless the said defendant is, pending such hearing, restrained as hereinafter set forth:

Therefore, complainant's application for such restraining order is granted upon its giving a bond with two good and sufficient sureties to be approved by the clerk of this court, in the penal sum of \$10,000.00, securing the said defendant against all loss or damages that may result from the issue of said order, and if it should finally be determined that the same was improperly issued, or that may be awarded to him by reason of the granting of said order.

18

2.

Now therefore, it is ordered that you, the said John A. Harrison, as sheriff of Pittsburg County, Oklahoma, and personally, defendant herein, your agents, servants and attorneys, and all persons acting by or under your authority or direction, be, and you are hereby specially restrained and enjoined from attempting to levy and collect the tax warrant now in your hands for the sum of \$16,939.11, delivered to you by the Auditor of the State of Oklahoma, and from taking any action whatever to enforce the payment of said tax, and any costs or penalties incident thereto until the further order of this court.

It is further ordered that a copy of this order, certified under the hand of the clerk of this court, be served on the defendant to be restrained thereby.

Dated at McAlester, in the Eastern District of Oklahoma, this 19 day of July, 1909.

RALPH E. CAMPBELL,  
*Judge of the United States Circuit Court  
for the Eastern District of Oklahoma.*

Endorsed: July 19, 1912, L. G. Disney, Clerk U. S. Circuit Court, Eastern District, Oklahoma.



19 In the United States Circuit Court for the Eastern District of Oklahoma,

CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY, Complainant,

vs.

JOHN A. HARRISON, as Sheriff of Pittsburg County, Oklahoma, and Personally, Defendant.

*Bond.*

Know all men by these presents, That we, Choctaw, Oklahoma and Gulf Railroad Company, as principal, and A. U. Thomas and J. J. Kirkpatrick, as sureties, are held and firmly bound unto John A. Harrison, defendant in the above entitled action, in the just and full sum of Ten Thousand Dollars (\$10,000.00), for the payment of which, well and truly to be made, we do hereby bind ourselves, our executors and administrators

Conditioned as follows: That whereas, the Choctaw, Oklahoma and Gulf Railroad Company has commenced suit against the said John A. Harrison in the Circuit Court of the United States for the Eastern District of Oklahoma, and prayed for an injunction against the defendant pending the trial of said suit, and also prayed for a restraining order upon said defendant preliminary to a hearing of said application for an injunction.

And whereas, the Honorable Ralph E. Campbell, Judge of said court, has ordered that a restraining order be issued against the defendant upon the execution of a good and sufficient bond for the sum of \$10,000.00, as required by law,

Now therefore, if the said Choctaw, Oklahoma and Gulf Railroad Company shall well and truly pay the said defendant, John A. Harrison, all costs and damages which may be awarded to him in case said court shall finally determine that said order was improperly granted, not exceeding the sum of \$10,000.00, then  
20 this obligation to be null and void, otherwise to remain in full force and effect.

Witness our hands and seals this 19th day of July, 1909.

CHOCTAW, OKLAHOMA AND GULF  
RAILROAD COMPANY,

By STUART & GORDON,

*Att'ys in Law and Fact.*

A. U. THOMAS,

J. J. KIRKPATRICK,

*Sureties.*

Approved this 19th day of July, 1909.

L. G. DISNEY,

*Clerk U. S. Circuit Court, Eastern Dist. of Oklahoma,*

By GILES A. PENICK, Deputy.

Endorsed: Filed July 19, 1909. L. G. Disney, Clerk U. S. Circuit Court, Eastern District, Oklahoma.

14 THE CHOCTAW, OKLAHOMA & GULF RAILROAD CO. VS.

21 And thereafterwards, to-wit, on the 3rd day of September 1909, the parties hereto filed stipulation that notice should be served on opposite party before cause is taken up. Said stipulation is in words and figures as follows, to-wit:

22 Circuit Court United States, Eastern District of Oklahoma

THE CHOCTAW, OKLAHOMA & GULF RAILROAD COMPANY, Plaintiff,

vs.

JOHN HARRISON, as Sheriff of Pittsburg County, State of Oklahoma, et al.

*Stipulation.*

It is hereby agreed and stipulated between plaintiff and defendants that no further action shall be taken or proceedings had in this cause without previous reasonable notice in writing having been given to the opposite party; that plaintiff will take no advantage of defendants for their failure to file demurrer, answer or other pleading herein, within the time prescribed by law, and that, at such time hereafter, when either party may desire to take up this cause, the opposite party shall have notice and reasonable time in which to file necessary or proper pleadings, and that neither party shall be regarded as being in default until after such notice and reasonable time in which to appear and plead.

CHAS. WEST AND  
T. R. DEAN,

*Attorneys for Plaintiff.*  
STUART & GORDON,  
*Attorneys for Defendants.*

Endorsed: Filed September 3, 1909. L. G. Disney, Clerk U. S. Circuit Court, Eastern District, Oklahoma.

23 And thereafterwards, to-wit, on the 1st day of November, 1911, the defendants filed demurrer to petition of the Plaintiff. Said demurrer is in words and figures as follows, to-wit:

24 In the Circuit Court of the United States for the Eastern District of the State of Oklahoma.

No. —.

THE CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY, Complainant,

vs.

JOHN A. HARRISON, as Sheriff of Pittsburg County, Oklahoma, and Personally, Defendant.

*Demurrer to Plaintiff's Bill of Complaint.*

The demurrer of John A. Harrison, as Sheriff of Pittsburg County, State of Oklahoma, and personally, the defendant above

named to the Bill of Complaint of the Choctaw, Oklahoma and Gulf Railroad Company, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things, in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, demurs thereto, and for cause of demurrer, shows:

That the said complainant has not in and by the said bill, made or stated any such cause as doth or ought to entitle him to any such relief as is thereby sought and prayed for from or against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto and humbly demands the judgment of this Court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

25

CHARLES WEST,  
*Attorney General of the State of Oklahoma,*  
*Defendant's Attorney.*  
By W. C. REEVES,  
*Assistant Attorney General.*

STATE OF OKLAHOMA,  
*County of Oklahoma, ss:*

W. C. Reeves makes solemn oath and says that he is an Assistant Attorney General of the State of Oklahoma, and counsel for the above named defendant, that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

W. C. REEVES.

Subscribed in my presence and sworn to before me this 28th day of September, A. D., 1911.

[SEAL.]

JULIETTE WRIGHT,  
*Notary Public.*

My commission expires July 17, 1915.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

W. C. REEVES,  
*Of Counsel for Defendant.*

Endorsed: Filed November 1st, 1911, L. G. Disney, Clerk.

26

And thereafter, to-wit, on the 14th day of May, 1912, the parties hereto filed stipulation, that cause should be submitted to the Court upon briefs of counsel. Said stipulation is in words and figures as follows, to-wit:

27 In the United States District Court for the Eastern District of Oklahoma. In Equity, No. 1110.

THE CHOCTAW, OKLAHOMA & GULF RAILROAD COMPANY, Complainant,

vs.

JOHN A. HARRISON, Sheriff, Defendant.

*Stipulation.*

The parties hereby agree that the foregoing case shall be set down for decision on the demurrer upon the briefs already on file, without further argument.

C. O. BLAKE,  
*For Plff.*  
CHAS. WEST,  
*For Def't.*

Endorsed: Filed May 14, 1912, R. P. Harrison, Clerk.

28 And thereafterwards, to-wit, on the 14th day of May, 1912, the same being one of the days of a special session of the United States District Court held — the Court room in the City of Muskogee, Oklahoma, Court met pursuant to adjournment at Muskogee. Present and presiding the Honorable Ralph E. Campbell, Judge.

Among the proceedings had on this day is the following, to-wit:

No. 1110.

C. O. & G. R. R. Co.

vs.

JOHN HARRISON, as Sheriff, et al.

In accordance with stipulation of parties filed herein, it is ordered that this cause be and the same is hereby, submitted to the Court, upon the briefs of Counsel.

29 And thereafter, to-wit, on the 1st day of July, 1912, the Court filed his Memoranda of Opinion herein. Said Opinion is in words and figures as follows, to-wit:

30 In the District Court of the United States for the Eastern District of Oklahoma.

No. 1110, Equity.

THE CHOCTAW, OKLAHOMA & GULF RAILROAD COMPANY, Complainant,

vs.

JOHN A. HARRISON, as Sheriff of Pittsburg, State of Oklahoma, Defendant.

*Memoranda Opinion.*

CAMPBELL, D. J.:

This matter comes up on demurrer to the bill: From the bill it appears the plaintiff is a corporation organized under an act of Congress, and the defendant is the Sheriff of Pittsburg County, Oklahoma. The case arises out of the attempt of the State officers to levy and collect from the plaintiff, or rather its agent, the Rock-Island Coal Mining Company, the tax known as the "gross revenue tax," upon output of coal under the provisions of the act of 1908, providing for what is known as a gross revenue tax.

In 1887 the Choctaw Coal & Railway Company, a corporation, was organized under the laws of Minnesota, and empowered by act of Congress to build and maintain a railroad through the Indian Territory, a branch of which was to run to the leased coal vein of the company in the Choctaw Nation, Indian Territory, being coal leases which the company had acquired from various citizens of the Choctaw Nation. In 1890 the United States gave its consent to these leases by act of Congress. The Choctaw Coal & Railway Company proceeded to develop coal mines upon said leases and constructed a railway to the same, in the prosecution of which it became insolvent, and by act of Congress of August 24, 1894, the purchasers of the right of way, railroads, mines, coal leasehold estates, and other properties and franchises of the Choctaw Coal & Railway Company, under decree of court, were authorized to form a corporation in which was to be vested all the former rights, title, interest, property and possession in, to and of the rights of way, railroad, mines, etc., of the Choctaw Coal & Railway Company, with all the franchises which had been conferred upon said company by acts of Congress, or which it possessed by virtue of its charter under the laws of Minnesota. Pursuant to said act of Congress, the Choctaw, Oklahoma & Gulf Railway Company, complainant herein, was organized. Section 4 of said act provided:

"That it shall and may be lawful for such new corporation to construct and operate branches from its said railroad and for such purpose to take and use rights of way not exceeding one hundred feet in width, upon making compensation therefor as provided for in the case of taking land for its main line, and to lease its railroads and mines and other property to any company owning or operating

a railroad connecting with the railroad of said new corporation on such terms and conditions as may be agreed upon, provided, That the right to construct branches, conferred by this section shall exist and be exercised in the Indian Territory only for the purpose of developing and working the leases mentioned in the act of Congress of October first, eighteen hundred and ninety."

In April, 1896, a subsequent act of Congress was passed, sec. 2 of which reads:

"That the powers conferred by said section four shall extend to branches intended to aid the development of any coal or timber territory contiguous or tributary to the lines of railroad of the said Choctaw, Oklahoma and Gulf Railroad Company, whether owned or controlled by said company or by others, said branches not to exceed in length five miles, and to the construction and operation of a branch from any point on its existing line of railway to the northern line of the state of Texas, and for this purpose the said company shall have the like rights, powers, and franchises, as to the acquisition of a right of way and depot grounds, and as to the construction and operation of said branch, and shall be subject to the like conditions and restrictions as it possesses or is subject to under or by virtue of the provisions of the said act of August twenty-fourth, eighteen hundred and ninety four, as to the line of railroad acquired or constructed thereunder."

32 The Choctaw, Oklahoma & Gulf Railroad Company purchased and became possessed of all the rights, property and franchises of the Choctaw Coal & Railroad Company, and in addition thereto, the rights granted by said acts of Congress. By the "Curtis Act" of June 28, 1898, it was provided that the coal lands of the Choctaw and Chickasaw Nations should be under the supervision of two trustees, and that royalties from coal to be thereafter mined from mines already developed or future mines, should be paid into the treasury of the United States, and the mines should be leased and operated under such rules and regulations as the Secretary of the Interior might prescribe. Pursuant thereto, the Choctaw, Oklahoma & Gulf Railroad Company secured from said trustees thirty leases, covering approximately the same lands embraced in the leases assented to by said act of Congress of October, 1890. Prior to March 24, 1904, the Choctaw, Oklahoma & Gulf Railroad Company had constructed and become possessed of various lines of railroad set forth in the bill. Prior to the last mentioned date, it had located, developed, and was operating these mines at a cost of about one million dollars; on the said leases, all being adjacent to the right of way and connected therewith by branch, spur or side tracks; and said Choctaw, Oklahoma & Gulf Railroad Company was by virtue of its rights, powers, privileges, and franchises under its said charter and said act of Congress, aforesaid, on March 24, 1904, and now is, possessed of the commingled rights to own and operate its said railways and coal mines in conjunction with each other; that the right to operate the same was and is a vested right arising from and supported by the contract so made and complied with by and between the United States and said complainant, the Choctaw, Oklahoma &

33 Gulf Railroad Company, of which it cannot be deprived without just compensation and due process of law, and that the State of Oklahoma has no right, power or authority to impair the obligation of the same by imposing said or any license tax upon the exercise of complainant's right or the performance of its duties under said contract.

That the lands upon which said coal mines are located are the property of the Choctaw and Chickasaw tribes of Indians located within the Choctaw Nation upon segregated and unallotted lands of said Nations, the title thereto still being in said tribes. By the terms of the Curtis Act and the Atoka agreement, these coal lands art to remain and be the common property of the members of the said tribes, and the revenue derived therefrom shall be used for the education of the children of Indian blood and of the members of said tribes. All leases of said coal lands are subject to the approval of the Secretary of the Interior, and all royalties derived therefrom are to be paid in to the Treasury of the United States.

Reference is then made to the terms of the Enabling Act, whereby it is provided that nothing in the State Constitution shall be construed to limit or impair the rights of person or property pertaining to the Indians, so long as their rights shall remain unextinguished, or to limit or affect the authority of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaty, agreement, law, or otherwise, which it would have been competent to make if the Enabling Act had not been passed. It is charged that the action of the officers of the State, in attempting to levy and collect the tax herein complained of, is in violation of the Federal law as aforesaid, and of the Constitu-

34 tion and laws of the State of Oklahoma. That the two per centum tax sought to be collected is in violation of the Fourteenth Amendment of the Federal Constitution in this; that it is in its effect confiscatory and will have the effect of destroying complainant's business and preventing it from discharging its obligations to pay royalty, and, if enforced, will prevent complainant from earning anything like a reasonable profit upon its investment, and will amount to the taking of complanant's property without due process of law. It is further charged that the said gross revenue tax law is invalid because it is in violation of section 19 of Article 10 of the Oklahoma Constitution, providing that such acts shall specify distinctly the purpose for which the tax is levied.

That the complainant has been at all times during the existence of said leases and now is in duty bound to work, operate, sell and transport the products of said mines in accordance with said leases and acts of Congress; that from the year 1900 to 1908 it mined and marketed five million, eight hundred thousand tons of coal, upon which it paid a royalty of four hundred and sixty-three thousand, three hundred and sixty-two dollars; that on March 16, 1908, complainant entered into a contract of agency with the Rock-Island Coal Mining Company, under which the latter company, as complainant's agent, assumed and agreed to work and operate said mines, and market the product thereof, for a commission of five cents per



ton for all coal produced and sold, since which time the complainant has been and now is working and operating its mines and marketing the product thereof through its said agent, and the complainant is bound to pay all expenses of every kind, relating to the operation of the said mines, and of the transaction of the business of said agency. That by reason of coal already mined prior to the filing of the bill, the State Auditor, in performance of what appeared to him to be his official duty, claimed as due under said gross revenue law, the sum of sixteen thousand, nine hundred and thirty-nine dollars, and eleven cents, by reason of said production and the revenue derived therefrom, and has issued his warrant directed to the defendant, as sheriff of said county, commanding him to levy upon the property of the said Rock-Island Coal Mining Company, against whom the tax is claimed, and sell the same and make return thereof as upon execution. That if the payment of said pretended tax is enforced, the complainant would, under the terms of its contract with the Rock-Island Coal Mining Company, be compelled to pay the same, and is, therefore, the real party in interest. That all the properties of the complainant subject to taxation, of every kind, have been assessed at their full value for taxation for the full period of time for which such pretended tax is claimed: wherefore, it is prayed that the defendant and all persons acting for him be enjoined from taking any action to enforce the payment of said pretended tax, and that the same be set aside and held for naught.

The demurrer is general.

36 It is contended by counsel for complainant, in their brief, that this tax is nothing more nor less than a burden or restriction upon the complainant as a Federal instrumentality in the performance of duties to the Federal government, and its Indian wards; that by virtue of their respective charters, each of these corporations was authorized by the Federal government to engage in the business specified, and that the excise or tax sought to be laid is upon the rights to engage in such business, and amounts to the impairment of a valid contract between the Federal government and this complainant. The bill attacks the law on other grounds, but they are not urged in the briefs of complainant's counsel, and, on examination, are not considered tenable.

The fact that the Choctaw, Oklahoma & Gulf Railroad Company is a Federal corporation does not, in view of the legislative history, present the case in any different aspect from what it would assume were the Choctaw Coal & Railway Company, (a Minnesota corporation), still operating the mines under leases similar to those now held by the Choctaw, Oklahoma & Gulf Railroad Company. The United States, as guardian of the Indian tribes through Congress, by Act of October 1st, 1890, consented to the eleven leases already taken by the Choctaw Coal & Railway Company from certain individual citizens of the tribes in consideration of certain royalties paid such individuals and the Nations. Upon the failure of the Choctaw Coal & Railway Company, through insolvency, to complete the railway provided for by the Act of February 18, 1888 (25 Stat. 39), the purchasers of the portion of the railroad already constructed and the

leasehold interests and other property and franchises of the Choctaw

Coal & Railway Company under judicial sale pursuant to the  
 37 receivership following insolvency, were authorized by the Act  
 of August 24, 1894, to organize a corporation to take up the  
 work where the Choctaw Coal & Railway Company left it, and carry  
 it on, and so far as the leasehold interests are concerned, acquired  
 no peculiar rights as a federal corporation, but only such as the  
 Choctaw Coal & Railway Company originally had, and such as by  
 subsequent legislation were acquired by all lessees of coal lands  
 within these nations. The Act of February 18, 1888, had reference  
 solely to the railway contemplated by the Choctaw Coal & Railway  
 Company, and authorized its construction in Indian Territory, one  
 of its objective points being the coal leases which the company had  
 acquired from certain individual citizens of the nations, under tribal  
 laws. The Act of October 1st, 1890, as stated, on the other hand,  
 had relation solely to said coal leases, and ratified them by Congress-  
 sional consent. The Atoka Agreement, incorporated in the Curtis  
 Bill (30 Stat. 495) approved June 28, 1898, rendered void all agree-  
 ments theretofore made by any person or corporation with any  
 member or members of the Choctaw and Chickasaw Nations, the  
 object of which was to obtain permission to operate coal or asphalt  
 mines, with the proviso that nothing contained in said act should  
 impair the rights of any holder or owner of a leasehold interest in  
 any oil, coal rights, asphalt, or mineral which had been assented  
 to by Act of Congress, but all such interests were to continue un-  
 impaired and new leases therefor were to be entered into with the  
 National Coal Trustees in six months, the terms of such new leases  
 to be according to the provisions of the act relating to the future  
 leasing and handling of the coal lands by the said trustees. While  
 this provision gave the Choctaw, Oklahoma & Gulf Railroad Com-  
 pany a prior right to acquire new leases upon these coal lands

38 covered by the old leases to which Congress had given its  
 consent, still under the new leases, the relation of the com-  
 pany to the Indian nations and to the United States is not different  
 from that of any other corporation or individual now holding leases  
 acquired under the terms of the Atoka Agreement. The contention,  
 therefore, that by reason of the several special Acts of Congress re-  
 lating to the Choctaw Coal & Railway Company and the Choctaw,  
 Oklahoma & Gulf Railroad Company, the latter company now main-  
 tains a contractual relation with the United States, different from  
 that of other coal lessees, is not sound. Nor is the Choctaw, Okla-  
 homa & Gulf Railroad Company, although a federal corporation,  
 any more a federal agency in the operation of the mines upon these  
 Indian lands than any other corporation or individual lessee. Rail-  
 road Company v. Penniston, 18 Wall. 5.

In *Binion, Sheriff, v. Oklahoma Gas & Electric Co.*, 28 Okla. 356,  
 it is said:

"The act of May 26, 1908, *supra*, embraces but one general subject  
 and indicates a unity of purpose to provide for the levy and collec-  
 tion of a gross revenue tax, as is specifically authorized by Sec.12,

Art. 10 of the Constitution. The Act of March 27, 1909, *supra*, amendatory thereto, indicates the same purpose."

The Act as applied to public service corporations has been held to be unconstitutional by the United States Supreme Court. *Meyer, Auditor, v. Wells Fargo Express Co.*, decided February 19, 1912. But the sections of the Act under consideration in that case have relation to public service corporations whether engaged in interstate or intrastate business. Sec. 6 here involved, is still another section of the act applying to mining companies, operating within the state, and, standing alone, has none of the objectionable features which were found by the Supreme Court in the sections relating to public service corporations. This section, therefore, unless bad for

39 some other reason, may be permitted to stand, notwithstanding the other sections are held to be unconstitutional, as it is clearly independent and separable, and complete in itself. *Encyc. of U. S. Sup. Ct. Repts.*, Vol. 11, p. 89. In *Thompson v. Pacific R. R.*, 76 U. S. 579, it is said:

"We do not doubt the propriety or the necessity, under the Constitution, of maintaining the supremacy of the General Government within its constitutional sphere. We fully recognize the soundness of the doctrine, that no State has a 'right to tax the means employed by the government of the Union for the execution of its powers.' But we think there is a clear distinction between the means employed by the government and the property of agents employed by the government. Taxation of the agency is taxation of the means; taxation of the property of the agent is not always, or generally, taxation of the means.

"No one questions that the power to tax all property, business, and persons, within their respective limits, is original in the States and has never been surrendered. It cannot be so used, indeed, as to defeat or hinder the operations of the National government; but it will be safe to conclude, in general, in reference to persons and State corporations employed in government service, that when Congress has not interposed to protect their property from State taxation, such taxation is not obnoxious to that objection."

In *Telegraph Co. v. Texas*, 105 U. S. 460, it is said:

"The Western Union Telegraph Company having accepted the restrictions and obligations of this provision by Congress, occupies in Texas the position of an instrument of foreign and interstate commerce, and of a government agent for the transmission of messages on public business. Its property in the State is subject to taxation the same as other property, and it may undoubtedly be taxed in a proper way on account of its occupation and its business."

In *Baltimore Shipbuilding Co. v. Baltimore*, 195 U. S. 375, it is said:

"Finally, we are of opinion that the land is not exempt as an agency of the United States. The Dock Company disclaimed that position for itself as a corporation, but asserts it for the land. The position is answered technically, perhaps, by what we have said already. The United States has no present right to the land but merely a personal claim against the corporation, reinforced by a

condition. But, furthermore, it seems to us extravagant to say that an independent private corporation, for gain, created by a State, is exempt from state taxation, either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time. Thomson v. Pacific Railroad, 9 Wall. 579; Railroad Company v. Penniston, 18 Wall. 5."

In Railroad Company v. Pen-iston, supra, it is said:

"That the taxing power of a State is one of its attributes of sovereignty; that it exists independently of the Constitution of the United States, and underived from that instrument; and that it may be exercised to an unlimited extent upon all property, trades, business, and avocations existing or carried on within the territorial boundaries of the State, except so far as it has been surrendered to the Federal government, either expressly or by necessary implication, are propositions that have often been asserted by this court. And in thus acknowledging the extent of the power to tax belonging to the States, we have declared that it is indispensable to their continued existence. No one ever doubted that before the adoption of the Constitution of the United States each of the States possessed unlimited power to tax, either directly or indirectly, all persons and property within their jurisdiction, alike by taxes on polls, or duties on internal production, manufacture, or use, except so far as such taxation was inconsistent with certain treaties which had been made. And the Constitution contains no express restriction of this power other than a prohibition to lay any duty of tonnage, or any impost, or duty on imports or exports, except what may be absolutely necessary for executing the State's inspection laws. As was said in Lane County v. Oregon: 'In respect to property, business, and persons within their respective limits, the power of taxation of the States remained, and remains entire, notwithstanding the Constitution. It is, indeed, a concurrent power (concurrent with that of the General government), and in the case of a tax upon the same subject by both governments, the claim of the United States as the supreme authority must be preferred; but with this qualification it is absolute. The extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the legislatures to which the States commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the State constitutions, or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the National government. There is nothing in the Constitution which contemplates or authorized any direct abridgement of this power by National legislation. To the extent just indicated it is as complete in the States as the like power within the limits of the Constitution is complete in Congress.' Such are the opinions we have expressed heretofore, and we adhere to them now.

There are, we admit, certain subjects of taxation which are withdrawn from the power of the States, not by any direct or express provision of the Federal Constitution, but by what may be regarded

as its necessary implications. They grow out of our complex system of government, and out of the fact that the authority of the National government is legitimately exercised within the States.

41 While it is true that government cannot exercise its power of taxation so as to destroy the State governments, or embarrass their lawful action, it is equally true that the States may not levy taxes the direct effect of which shall be to hinder the exercise of any powers which belong to the National government. The Constitution contemplates that none of those powers may be restrained by State legislation. But it is often a difficult question whether a tax imposed by a State does in fact invade the domain of the General government, or interfere with its operations to such an extent, or in such a manner, as to render it unwarranted. It cannot be that a State tax which remotely affects the efficient exercise of a Federal power is for that reason alone inhibited by the Constitution. To hold that would be to deny to the States all power to tax persons or property. Every tax levied by a State withdraws from the reach of Federal taxation a portion of the property from which it is taken, and to that extent diminishes the subject upon which Federal taxes may be laid. The States are, and they must ever be, coexistent with the National Government. Neither may destroy the other. Hence the Federal Constitution must receive a practical construction. Its limitations and its implied prohibitions must not be extended so far as to destroy the necessary powers of the States, or prevent their efficient exercise."

In *Thomas v. Gay*, 169 U. S. 264, a tax imposed by Oklahoma Territory upon cattle grazed upon Indian land was sustained as being too remote and indirect to be deemed a tax upon lands or privileges of the Indians. It is true that in this case the court remarks that the taxes in question were not imposed on the business of grazing.

On consideration of the foregoing authorities and authorities cited in brief of counsel, I conclude that even if it be conceded that the plaintiff, by virtue of the coal leases, becomes in any sense a Federal agency, the tax in question, if it can be said to interfere with such agency in any respect, is, at any rate, too remote an interference to come within the implied constitutional prohibitions against such interferences, and no express prohibition has been made by Congress. In the absence of such prohibition, either express or implied, the right of the State to impose the tax cannot be questioned. The demurrer to the bill will, therefore, be sustained, the temporary restraining order heretofore granted will be dissolved, and the bill will be dismissed.

42

RALPH E. CAMPBELL, *Judge*.

Endorsed, Filed July 1, 1912, R. P. Harrison, Clerk.

43 In the District — of the United States in and for the Eastern District of the State of Oklahoma.

THE CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY,  
Complainant,

vs.

JOHN A. HARRISON, as Sheriff of Pittsburg County, State of Oklahoma, and Personally.

*Decree.*

This cause coming on to be heard, on this July 8th, 1912, at a special term of this Court, at Muskogee, in said District, upon the defendant's demurrer to Complainant's bill, and after hearing arguments of counsel and duly considering said demurrer, the Court is of the opinion that the demurrer should be sustained;

It is therefore ordered, adjudged and decreed by the Court that the defendant's demurrer to Complainant's bill be in all things sustained; that the temporary injunction heretofore granted in this cause on July 19th, 1909, be dissolved, and that Complainant's bill filed in this cause be dismissed; that the defendant recover his costs, and that the Complainant be adjudged to pay all costs incurred in this cause, for which let execution issue.

RALPH E. CAMPBELL,

*U. S. District Judge.*

Approved:

C. O. BLAKE &

J. G. GAMBLE,

*For Complainant.*

W. C. REEVES,

*Ass't Attorney General,*

*For Defendant.*

Endorsed: Filed July 8, 1912. R. P. Harrison, Clerk.

44 And thereafter, to-wit, on the 8th day of July, 1912, the Complainant herein filed Petition for Supersedeas, which petition was allowed by the Court. Said Petition for Supersedeas, Order allowing same and Supersedeas Bond are in words and figures as follows, to-wit:

45 In the District Court of the United States for the Eastern District of the State of Oklahoma.

In Equity, No. 1110.

THE CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY,  
Complainant,

vs.

JOHN A. HARRISON, as Sheriff of Pittsburg County, State of Oklahoma, and Personally, Defendant.

Now comes the above named Complainant and represents to the Court that a decree was made and entered in this Court on the



8th day of July, A. D. 1912, in the above entitled cause, pending in the District Court of the United States for the Eastern District of the State of Oklahoma, sustaining the demurrer to the bill, dismissing the bill and dissolving the temporary injunction granted in said cause, and the said The Choctaw, Oklahoma and Gulf Railroad Company has prosecuted its appeal to the Supreme Court of the United States, as authorized by law, and has given a supersedeas bond in the penal sum of — (\$—) dollars as will more fully appear from the record in this cause filed in the office of the Clerk of this Court.

And Complainant further represents to the Court that if the said decree dissolving the said temporary injunction stands in full force and effect until said appeal is heard and decided by the Supreme Court of the United States, the said Complainant will suffer great and irreparable injury, in that its property will be subjected to the payment of the tax sought to be enjoined, and the amount of said tax when so subjected to payment will be disbursed by the defendant herein in accordance with the laws of the State of Oklahoma.

Wherefore, said Complainant prays this Honorable Court to order this appeal bond, or such further bond as the Court may direct, to operate as a supersedeas to stay and suspend the operation and effect of said decree of this Court, and that this Court will make an order continuing in full force and effect the said temporary injunction until said appeal is heard and decided by the Supreme Court of the United States, and for such other and further relief as to the Court may seem meet.

C. O. BLAKE,  
W. H. MOORE &  
J. G. GAMBLE,  
*Attorneys for Complainant.*

Endorsed: Filed July 8, 1912. R. P. Harrison, Clerk.

47 In the District Court of the United States for the Eastern District of the State of Oklahoma.

In Equity, No. 1110.

THE CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY,  
Complainant,

vs.

JOHN A. HARRISON, as Sheriff of Pittsburg County, State of Oklahoma, and Personally, Defendant.

It appearing to the Court that The Choctaw, Oklahoma and Gulf Railroad Company, Complainant in the above entitled cause, has prosecuted an appeal to the Supreme Court of the United States to reverse the decree of this Court sustaining the demurrer to the bill, dismissing the bill and dissolving the injunction granted, in said cause, on the 8th day of July, A. D. 1912, and has filed a bond in the penal sum of Twenty-five Thousand (\$25,000.00) Dollars, with



the usual conditions of a supersedeas bond, and has filed its petition praying that an order be made continuing in full force and effect the injunction granted in said cause, until said appeal is heard and decided by the Supreme Court of the United States;

It is therefore ordered, adjudged, considered and decreed by the court, that the said appeal and bond operate as a supersedeas to stay and suspend the operation and effect of said decree of this Court, and that the said temporary injunction granted in said cause be and the same hereby is continued in full force and effect until said appeal is heard and decided by the Supreme Court of the United States.

Done, at the City of Muskogee, Oklahoma, in open Court, this 8 day of July, A. D. 1912.

RALPH E. CAMPBELL,  
*District Judge of the United States for the Eastern  
District of the State of Oklahoma.*

Endorsed: Filed July 8, 1912, R. P. Harrison, Clerk.

48 In the District Court of the United States for the Eastern  
District of the State of Oklahoma.

In Equity, No. 1110.

THE CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY,  
Complainant,

vs.

JOHN A. HARRISON, as Sheriff of Pittsburg County, State of Oklahoma, and Personally, Defendant.

*Supersedeas Bond on Appeal.*

UNITED STATES OF AMERICA, ss:

Know all men by these presents, that we, The Choctaw, Oklahoma and Gulf Railroad Company, a corporation, organized under the laws of the United States, as principal and American Surety Company of New York, as surety, are held and firmly bound unto the above named John A. Harrison, as Sheriff of Pittsburg County, State of Oklahoma, and personally, in the sum of Twenty-Five Thousand Dollars (\$25,000.00) dollars, to be paid to the said John A. Harrison, as Sheriff of Pittsburg County, State of Oklahoma, and for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 8th day of July, A. D. one thousand nine hundred and twelve.

Whereas, the above named, The Choctaw, Oklahoma and Gulf Railroad Company has prosecuted an appeal to the Supreme Court of the United States to reverse the decree sustaining the demurrer, dismissing the bill and dissolving the injunction, granted in the above entitled suit in the District Court of the United States for the

Eastern District of the State of Oklahoma, in Equity, on the 8th day of July, A. D. 1912.

49 Now, therefore, the condition of this obligation is such that if the above named The Choctaw, Oklahoma and Gulf Railroad Company shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make such appeal good, and shall pay all the taxes, together with the interest thereon, which it is sought by the bill in this cause to enjoin and shall pay all damages and costs if it fail to make its plea good; then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

THE CHOCTAW, OKLAHOMA AND  
GULF RAILROAD CO.,

By C. O. BLAKE,  
W. H. MOORE &  
J. G. GAMBLE,

*Its Attorneys.*

[SEAL.]

AMERICAN SURETY COMPANY OF  
NEW YORK,

By L. J. ROACH,  
*Resident Vice-President.*

Attest:

W. M. MORRIS,  
*Resident Ass't Secretary.*

The foregoing bond is hereby approved to operate as a supersedeas as to said decree.

RALPH E. CAMPBELL,  
*District Judge of the United States for the Eastern  
District of the State of Oklahoma.*

Endorsed: Filed July 8, 1912. R. P. Harrison, Clerk.

50 And, to-wit, on the same — the Complainant filed Assignment of Errors, Petition for appeal, which Petition for Appeal was by the Court allowed and Appeal Bond filed. Said Assignment of Errors, Petition for Appeal, Order allowing same and Appeal Bond are in words and figures as follows, to-wit:

51 In the District Court of the United States for the Eastern District of the State of Oklahoma.

In Equity, No. 1110.

THE CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY,  
Complainant,

vs.

JOHN A. HARRISON, as Sheriff of Pittsburg County, State of Oklahoma, and Personally, Defendant.

The Complainant prays an appeal from the final order of this Court to the Supreme Court of the United States, and assigns for error:

First. That the Court erred in sustaining the demurrer to the bill and dismissing the bill.

Second. That the Court erred in granting the motion to dissolve the temporary injunction.

Third. That the Court erred in sustaining the validity of the Act of the Legislature of the State of Oklahoma, approved May 26, 1908, for the reason that the said Act is in contravention of the Constitution of the United States, especially Section 10 of Article I thereof, providing that no State shall pass a law impairing the obligation of contracts.

Fourth. That the Court erred in sustaining the validity of the Act of the Legislature of the State of Oklahoma, approved May 26, 1908, for the reason that the said Act is in contravention of the Constitution of the United States, especially Section 8 of Article I thereof, providing that Congress shall have power to regulate commerce with foreign nations and among the several States, and with the Indian tribes.

Fifth. That the Court erred in sustaining the validity of the Act of the Legislature of the State of Oklahoma, approved May 26, 1908, for the reason that said Act is in contravention of the Constitution of the United States in that it imposes a burden upon an instrumentality of the Federal Government.

Sixth. That said Court erred in holding that in the execution of the several contracts between the Trustees of the Choctaw and Chickasha Nations and Complainant, it is not a Federal instrumentality.

Seventh. That said Court erred in sustaining the validity of the Act of the Legislature of the State of Oklahoma, approved May 26, 1908, for the reason that the said Act is in contravention of the Constitution of the State of Oklahoma, especially Section 3 of Article I, and Sections 6 and 19 of Article X thereof.

Eighth. That said Court erred in sustaining the validity of the Act of the Legislature of the State of Oklahoma, approved May 26, 1908, for the reason that the said Act is in contravention of the Act of Congress of the United States approved March 4, 1907, known as the Enabling Act, especially of Sections 1 and 3 thereof.

Ninth. That the Court erred in holding that the tax sought to be laid under the said Act of the Legislature of the State of Oklahoma, approved May 26, 1908, is a tax on property.

Tenth. That the Court erred in holding that the tax laid under said Act of the Legislature of the State of Oklahoma, approved May 26, 1908, is too remote an interference with a Federal Agency to come within the prohibition against such an interference.

Eleventh. That the Court erred in sustaining the validity of the Act of the Legislature of the State of Oklahoma, approved May 26, 1908, for the reason that the said Act is in contravention of the Constitution of the United States, especially the Fourteenth Amendment thereto.

Wherefore Complainant prays that the decree of the said District Court be reversed.

C. O. BLAKE,  
W. H. MOORE, AND  
J. G. GAMBLE,  
*Attorneys for Complainant.*

Endorsed: Filed July 8, 1912. R. P. Harrison, Clerk.

30 THE CHOCTAW, OKLAHOMA & GULF RAILROAD CO. VS.

53 In the District Court of the United States for the Eastern District of the State of Oklahoma.

In Equity, No. 1110.

THE CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY,  
Complainant,

vs.

JOHN A. HARRISON, as Sheriff of Pittsburg County, State of Oklahoma, and Personally, Defendant.

The above named Complainant, conceiving itself aggrieved by the decree made and entered on the 8th day of July, A. D. 1912, in the above entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

C. O. BLAKE,  
W. H. MOORE, AND  
J. G. GAMBLE,  
*Attorneys for Complainant.*

Dated this 8th day of July, A. D. 1912.

The foregoing claim of appeal is allowed.

RALPH E. CAMPBELL,  
*District Judge of the United States in and for  
the Eastern District of the State of Oklahoma.*

Dated this 8 day of July, A. D. 1912.

Endorsed: Filed July 8, 1912. R. P. Harrison, Clerk.

54 In the District Court of the United States for the Eastern District of the State of Oklahoma.

In Equity, No. 1110.

THE CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY,  
Complainant,

vs.

JOHN A. HARRISON, as Sheriff of Pittsburg County, State of Oklahoma, and Personally, Defendant.

*Bond on Appeal.*

UNITED STATES OF AMERICA, ss:

Know all men by these presents, that we, The Choctaw, Oklahoma and Gulf Railroad Company, as principal, and American Surety

Company of New York, as surety, are held and firmly bound unto John A. Harrison, as Sheriff of Pittsburg County, State of Oklahoma, and personally, in the full and just sum of Two Hundred and Fifty and 00/100 (\$250.00) dollars to be paid to the said John A. Harrison, as Sheriff of Pittsburg County, State of Oklahoma, and personally, his certain attorneys, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 8th day of July, A. D. one thousand nine hundred and twelve.

Whereas, lately at a District Court for the Eastern District of the State of Oklahoma, in a suit depending in said Court between The Choctaw, Oklahoma and Gulf Railroad Company, Complainant, and John A. Harrison, as Sheriff of Pittsburg county, State of Oklahoma, and personally, a decree was rendered against the said The Choctaw, Oklahoma and Gulf Railroad Company — having obtained an appeal and filed a copy thereof in the Clerk's office of said Court,

55 to reverse the decree in the aforesaid suit, and a citation directed to the said John A. Harrison, as Sheriff of Pittsburg County, State of Oklahoma, and personally, citing and admonishing him to be and appear at a session of the Supreme Court of the United States at the City of Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said The Choctaw, Oklahoma and Gulf Railroad Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE CHOCTAW, OKLAHOMA AND  
GULF RAILROAD CO.,

By C. O. BLAKE,  
W. H. MOORE &  
J. G. GAMBLE,

*Its Attorneys.*

[SEAL.]

AMERICAN SURETY COMPANY OF  
NEW YORK,

By L. J. ROACH,

*Resident Vice-President.*

Attest:

W. M. MORRIS,  
*Resident Ass't Secretary.*

Approved by—

RALPH E. CAMPBELL,  
*District Judge of the United States for the  
Eastern District of the State of Oklahoma.*

Endorsed: Filed July 8, 1912. R. P. Harrison, Clerk.

55½ In the District Court of the United States in and for the Eastern District of the State of Oklahoma.

No. 1110.

THE CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY,  
Complainant,

vs.

JOHN A. HARRISON, as Sheriff of Pittsburg County, State of Oklahoma, and Personally, Defendant.

To the Clerk:

You are requested to take a transcript of record to be filed in the United States Supreme Court, pursuant to an appeal allowed in the above entitled cause and to include in such transcript of record the following and no other papers or exhibits, to-wit:

Bill of Complaint;  
Restraining Order;  
Bond on Restraining order;  
Stipulation that parties shall be notified before any action is taken upon pleadings;  
Demurrer to Bill of Complaint;  
Stipulation to submit cause upon briefs;  
Order that cause be submitted on briefs;  
Memoranda of opinion;  
Decree;  
Petition for supersedeas;  
Order allowing supersedeas;  
Supersedeas bond;  
Assignment of errors;  
Petition for appeal;  
Bond on Appeal;  
Certificate of Clerk.

Respectfully,

C. O. BLAKE,  
*Attorneys for Complainant.*

56 UNITED STATES OF AMERICA,  
*Eastern District of Oklahoma, ss:*

I, R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true, and correct transcript of so much of the record in the Case of The Choctaw, Oklahoma and Gulf Railroad Company vs. John Harrison, as Sheriff of Pittsburg County, State of Oklahoma, et al., No. 1110, as was ordered to be prepared and authenticated, together with the original Citation, as the same appears from the record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Muskogee, this 27th day of July A. D. 1912.

[Seal of the United States District Court, Eastern District of Oklahoma.]

R. P. HARRISON, *Clerk,*  
By H. E. BOUDINOT, *Deputy.*

57 In the District Court of the United States for the Eastern District of the State of Oklahoma.

In Equity. No. 1110.

THE CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY,  
Complainant,

vs.

JOHN A. HARRISON, as Sheriff of Pittsburg County, State of Oklahoma, and Personally, Defendant.

THE UNITED STATES OF AMERICA, ss:

The President of the United States to John A. Harrison, as Sheriff of Pittsburg County, State of Oklahoma, and Personally, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal, duly allowed by the District Court of the United States for the Eastern District of the State of Oklahoma, and filed in the clerk's office of said court on the 8th day of July, A. D. 1912; in a cause wherein The Choctaw, Oklahoma and Gulf Railroad Company is Appellant, and you are Appellee, to show cause, if any, why the decree rendered against the said Appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Ralph E. Campbell, District Judge of the United States in and for the Eastern District of the State of Oklahoma, this 8 day of July, A. D. 1912.

RALPH E. CAMPBELL,

*District Judge of the United States in and for  
the Eastern District of the State of Oklahoma.*

Service of a copy of the within citation is hereby admitted, this 8th day of July, A. D. 1912.

W. C. REEVES,

*Ass't Att'y Gen. of the State of Oklahoma,  
Attorney for Appellee.*

58 [Endorsed:] #1110. In the District Court of the United States for the Eastern District of the State of Oklahoma. The Choctaw, Oklahoma & Gulf R. R. Co., vs. John A. Harrison. Citation.

Endorsed on cover: File No. 23,320. E. Oklahoma D. C. U. S. Term No. 320. The Choctaw, Oklahoma and Gulf Railroad Company, appellant, vs. John A. Harrison, as Sheriff of Pittsburg County, State of Oklahoma, and Personally. Filed August 2, 1912. File No. 23,320.